



SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245-AH78

Debt Refinancing in the 504 Loan Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements section 328 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which revises the requirements for refinancing debt in the 504 Loan Program, including: for 504 debt refinancing involving expansions, increasing the amount of existing indebtedness that may be refinanced; and for 504 debt refinancing not involving expansions, removing two limitations on the program, reinstating an alternate job retention goal for the refinancing project, revising the definition of qualified debt, and removing the prohibition against Certified Development Companies (“CDCs”) participating in the Premier Certified Lenders Program using their delegated authority to make these loans.

DATES: Effective Date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Date: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AH78, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information via e-mail to

504refi@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 604-5032; email: linda.reilly@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 504 Loan Program is an SBA financing program authorized under title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.* The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment, in an effort to facilitate the creation or retention of jobs and local economic development. Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (“CDCs”), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a “504 Project”) includes: a loan obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost; a loan obtained from a CDC (a “504 Loan”) with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture); and a contribution from the Borrower of at least 10 percent equity.

In addition, the 504 Loan Program may be used to refinance debt under two options authorized under section 502(7)(B) and (C) of the Small Business Investment Act of 1958. First, if a 504 Project involves the expansion of the small business, any amount of existing indebtedness that does not exceed 50 percent of the project cost of the expansion may be refinanced and added to the project’s cost (Debt Refinancing with

Expansion) under the conditions set forth in section 502(7)(B) and the implementing regulations. *See* 13 CFR 120.882(e) and (f). Second, debt refinancing is available for a 504 Project that does not involve the expansion of the small business under the requirements set forth in section 502(7)(C) and 13 CFR 120.882(g) (Debt Refinancing without Expansion).

Section 328(a) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020, Public Law 116-260, revises the conditions and requirements for refinancing debt in the 504 Loan Program as follows:

(1) With respect to Debt Refinancing with Expansion, 13 CFR 120.882(e), the Economic Aid Act increases the amount of existing indebtedness that may be refinanced as part of a 504 Project from not more than 50 percent of the project cost of the expansion to not more than 100 percent of the project cost;

(2) With respect to Debt Refinancing without Expansion, 13 CFR 120.882(g), the Economic Aid Act:

(a) Eliminates the condition that this program shall only be in effect in any fiscal year during which the cost to the Federal Government of making guarantees under 13 CFR 120.882(g) and under the 504 Loan Program is zero;

(b) Eliminates the requirement that a CDC limit its financing under the 504 Loan Program so that, during any Federal fiscal year, new financings under 13 CFR 120.882(g) do not exceed 50% of the dollars the CDC loaned under the 504 Loan Program, including under 13 CFR 120.882(g), during the previous fiscal year, unless otherwise waived;

(c) Eliminates the prohibition against Premier Certified Lender Program (PCLP) CDCs using delegated authority to approve loan applications for Debt Refinancing without Expansion;

(d) Reinstates an alternate job retention standard that was previously removed from the Debt Refinancing without Expansion Program by section 521 of division E of the Consolidated Appropriations Act, 2016, Public Law 114-113, enacted on December 18, 2015;

(e) Revises the definition of “qualified debt” to mean debt that was incurred not less than 6 months before the date of application instead of 2 years before the date of application;

(f) Removes from the definition of “qualified debt” the condition that the debt not be subject to a guarantee by a Federal agency; and

(g) Eliminates from the definition of “qualified debt” the requirement that the borrower be current on all payments for not less than 1 year before the date of the application for refinancing.

As described in the section-by-section analysis below, SBA is issuing this interim final rule to conform the current rules to the requirements of the Economic Aid Act.

II. Comments and Immediate Effective Date

This interim final rule is effective without the advance notice and public comment required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the amendments described above without regard to notice requirements.

In addition, pursuant to section 553(d)(1), this rule is exempt from the APA’s 30-day delayed effective date requirement on the basis that it is a substantive rule that relieves restrictions relating to the debt refinancing options available to small businesses. SBA has also determined that, pursuant to section 553(d)(3), there is good cause for dispensing with the 30-day delayed effective date on the grounds that it would be contrary to the public interest. To meet the immediate debt refinancing needs of small

businesses impacted by the COVID-19 pandemic, it is essential to be able to implement the statutory changes to the refinancing programs as expeditiously as possible.

Although this rule is being published as an interim final rule, comments are solicited from interested members of the public. These comments must be submitted on or before the deadline for comments stated in this rule. SBA will consider any comments it receives and the need for making any amendments as a result of the comments.

III. Section-by-Section Analysis

Section 120.882(e). This provision currently states that the amount of existing indebtedness that may be refinanced is limited to no more than 50 percent of the project cost of the expansion. Section 328(a)(2)(A) of the Economic Aid Act amends section 502(7)(B) of the Small Business Investment Act to increase the percentage and, accordingly, SBA is revising this provision to increase the amount of existing indebtedness that may be refinanced to no more than 100 percent of the project cost.

Section 120.882(g)(3). This section currently provides that the approval of a Refinancing Project is subject to the requirement that the cost to the Federal Government of making guarantees under 13 CFR 120.882(g) and under the 504 Loan Program is zero during the fiscal year in which the guarantee is made. Section 328(a)(1) of the Economic Aid Act repeals this statutory requirement and, therefore, SBA is removing this requirement.

In its place, this provision will set forth the conditions and requirements that will apply to the refinancing of a loan that is subject to a guarantee by a Federal agency or department. As indicated above, the Economic Aid Act removes the prohibition against refinancing a loan that is subject to a guarantee by a Federal agency or department.

Although these loans may now be refinanced in the Debt Refinancing without Expansion program, the rule will provide that they must comply with SBA's policies related to the refinancing of existing 504 and 7(a) loans, including that:

(1) for an existing 504 loan, either both the Third Party Loan and the 504 loan must be refinanced, or the Third Party Loan must have been paid in full; and

(2) for an existing 7(a) loan, the CDC must verify in writing that the present lender is either unwilling or unable to modify the current payment schedule. In addition, in the case of same institution debt, if the Third Party Lender or the CDC affiliate as authorized under 13 CFR 120.820 is the 7(a) lender, the loan will be eligible for 504 refinancing only if the lender is unable to modify the terms of the existing loan because a secondary market investor will not agree to modified terms.

In addition, the rule will require that the refinancing of any Federally-guaranteed loan will provide a substantial benefit to the borrower. “Substantial benefit” will mean that the portion of the new installment amount attributable to the debt being refinanced must be at least 10 percent less than the existing installment amount(s). Prepayment penalties, financing fees, and other financing costs must be added to the amount being refinanced in calculating the percentage reduction in the new installment payment. The portion of the new installment amount attributable to Eligible Business Expenses will not need to be included in this calculation. The rule will also allow the Director, Office of Financial Assistance (D/FA) or designee to approve an exception to the 10 percent reduction requirement for good cause, and will not allow PCLP CDCs to use their delegated authority to approve a loan requiring this exception.

Section 120.882(g)(11). This section currently states that PCLP CDCs may not use delegated authority to approve refinancing under 13 CFR 120.882(g). Section 328(a) of the Economic Aid Act removes this statutory prohibition and, accordingly, SBA is removing the current language. In its place, the rule will state that PCLP CDCs may not approve the refinancing of same institution debt under their delegated authority and must submit the loan to SBA for approval. This requirement is consistent with SBA’s long-standing policy of prohibiting its participating lenders from using their delegated

authority to approve the financing of same institution debt due to the potential conflict of interest and the risk of the 504 loan proceeds being used to shift to SBA a potential loss from the existing debt.

Section 120.882(g)(15). SBA is redesignating the current paragraph (g)(15), Definitions, as paragraph (g)(16), and adding a new paragraph (g)(15) to set forth the alternate job retention standard that is reinstated by section 328(a) of the Economic Aid Act. Under this alternate job retention standard, the Agency may provide a 504 loan in the amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$75,000. The Economic Aid Act provides that the number of employees of a borrower is equal to the sum of:

- (1) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and
- (2) the product obtained by multiplying:
 - (a) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph, by
 - (b) the quotient obtained by dividing the average number of hours each part-time employee of the borrower works each week by 40.

An example of how this standard is calculated is included in the text of the rule.

Section 120.882(g)(16). As stated above, SBA is redesignating the current paragraph (g)(15), Definitions, as paragraph (g)(16) and is making five changes to the definition of “Qualified debt”. First, under the current language of paragraph (i), the debt must not have been incurred less than 2 years before the date of the application for refinancing. However, section 328(a) of the Economic Aid Act has shortened this period to 6 months before the date of the application for refinancing. Accordingly, SBA is revising this paragraph by replacing 2 years with 6 months.

Second, paragraph (i) currently allows a loan that was refinanced within the 2 years before the date of application (the most recent loan) to be deemed incurred not less than 2 years before the date of the application provided that the effect of the most recent loan was to extend the maturity date without advancing any additional proceeds. With the minimum age of the qualified debt shortened from 2 years to 6 months, SBA believes that it is no longer necessary to address this situation and is, therefore, removing the second and third sentences of paragraph (i).

Third, paragraph (ii) currently excludes debt that is subject to a guarantee by a Federal agency or department. As stated above, section 328(a) of the Economic Aid Act no longer includes this statutory exclusion and SBA is removing this paragraph and renumbering the remaining paragraphs accordingly. The conditions and requirements that will apply to the refinancing of a loan that is subject to a Federal guarantee will be set forth in paragraph (g)(3).

Fourth, under the current paragraph (vi), the definition of qualified debt excludes a Third Party Loan that is part of an existing 504 Project. However, under the new paragraph (g)(3), an existing 504 loan may be refinanced when both the Third Party Loan and the 504 loan are being refinanced. Accordingly, SBA is revising this paragraph, which will be newly designated as paragraph (v), to incorporate this exception to the general prohibition against a qualified debt including a Third Party Loan.

Fifth, the current paragraph (vii) reflects the statutory requirement that, for the debt to qualify for refinancing, the applicant must be current on all payments due for not less than one year preceding the date of application. Section 502(7)(C) of the Small Business Investment Act, as amended by section 328(a) of the Economic Aid Act, no longer includes this requirement and, accordingly, SBA is removing this paragraph from the regulations. In accordance with prudent lending standards, SBA expects CDCs to

consider whether the applicant is current on all payments due, and the applicant's history of delinquency, in its credit analysis.

Section 120.882(g)(16). The phrase "Same institution debt" is currently used in connection with the Debt Refinancing without Expansion program only in reference to the Third Party Loan, *see* §120.882(g)(13), and, thus, the current definition of "same institution debt" references only the Third Party Lender. With the requirement in §120.882(g)(11) that PCLP CDCs cannot use their delegated authority to approve the refinancing of same institution debt in the Debt Refinancing without Expansion program, SBA is revising the definition of "Same institution debt" to also mean the debt of the CDC (or its affiliates) that is providing funds for the refinancing.

Compliance with Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act (5 U.S.C. 801-808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) has determined that this rule constitutes a "significant regulatory action" for purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866, section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current conditions arising from the COVID-19 pandemic.

As shown in the table below, during the five-year period spanning FY 2016 and FY 2020, a total of 31,248,504 loans were approved for a total gross approval amount as of May 31, 2021 of \$25,720,047,200. In addition, during this five-year period, SBA approved 202 debt refinance with expansion loans on average per year with an average annual dollar volume of \$237,880,000, and approved 209 debt refinance without expansion loans on average per year with an average annual dollar volume of \$203,339,000. Of the debt refinance with expansion loans, only 16 refinanced a debt that

equaled 50 percent of the expansion costs; if these borrowers had been able to refinance 100 percent of the expansion costs instead of 50 percent, and assuming that all these borrowers did so, these borrowers would have been able to borrow \$15 million more over five years, or about \$3 million more annually.

Table 1. 504 Loan Activity FY 2016 - FY 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Total Number of 504 Loans	5,938	6,218	5,874	6,099	7,119
Total Dollar Volume of 504 Loans Approved	\$4,840,820,000	\$5,111,480,700	\$4,844,181,000	\$5,042,010,500	\$5,881,555,000
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Number of 504 Debt Refi With Expansion	193	219	181	181	236
Dollar Volume of 504 Debt Refi With Expansion	\$230,987,000	\$244,499,000	\$215,311,000	\$197,484,000	\$301,159,000
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Number of 504 Debt Refi Without Expansion	45	266	181	166	386
Dollar Volume of 504 Debt Refi Without Expansion	\$41,598,000	\$289,491,000	\$154,745,000	\$156,114,000	\$374,749,000

Data as of 5/31/2021, total dollar volume is lifetime gross approval amount including increases

This rule is necessary to implement the Economic Aid Act and provide economic relief to small businesses adversely impacted by COVID-19. SBA anticipates that the changes to the 504 debt refinancing programs will result in benefits to small businesses by providing greater flexibility to restructure debt.

Congressional Review Act

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), 5 U.S.C. 804(2).

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In order to implement the Act, SBA has determined that it is necessary to modify SBA Form 1244, *Application for Section 504 Loans*, which is currently approved under OMB Control Number 3245-0071, to conform the form to the revised requirements for debt refinancing loans. The changes do not add any new burdens for the respondents,

rather, in some instances, the revisions will result in reduced burden as applicants and CDCs no longer have to submit certain information.

Summary of Rule Revisions

(a) The information collection currently requires PCLP CDCs to process all applications for debt refinancing without expansion through the Sacramento Loan Processing Center (SLPC) and not through the PCLP CDC's delegated authority. As discussed above, this requirement was removed by the Economic Aid Act and, accordingly, SBA is removing it from the information collection. This revision does not change the information the PCLP CDC is required to collect, only how the application is processed. In addition, consistent with the changes made by this rulemaking, SBA is adding two questions to clarify that, for debt refinancing without expansion, PCLP CDCs must process applications through the SLPC when the application involves the refinancing of same institution debt or, in cases involving the refinancing of Federally-guaranteed debt, the CDC is requesting an exception to the requirement that the new installment payment be at least 10% less than the existing installment amount.

(b) With respect to the question regarding whether the Applicant creates or retains the required number of jobs per debenture amount, an option has been added for the Applicant to indicate whether the project is eligible under the 504 debt refinance alternate job goal established by the Economic Aid Act.

(c) Of the exhibits that are required, Exhibit 20 currently requires that, if the debt was previously refinanced within two years of the date of application, non-PCLP CDCs must submit with the application (and PCLP CDCs must retain in the loan file) copies of the current debt and lien instruments as well as copies of the debt and lien instruments for the debt that was replaced by the current debt. With the minimum age of the qualified debt shortened from 2 years to 6 months by the Economic Aid Act, SBA is revising the

form to remove the requirement that these debt and lien instruments be included as part of Exhibit 20.

In addition to the changes resulting from this rule, SBA is making the following technical corrections and clarifying changes to Form 1244: (1) SBA is adding two questions, consistent with the current regulations, to clarify when PCLP CDCs must submit applications for refinancing with expansion to the SLPC instead of approving the application under their delegated authority; (2) SBA is correcting the description of which exhibits are to be retained and which are to be submitted with the loan application; (3) SBA is adding a separate entry to facilitate disclosure of the use of refinancing proceeds involving land purchases only (the current format of “Land/Building” does not clearly indicate how information is to be reported); and (4) under the list of economic development objectives met by the project, SBA is adding references to “base closures” and “minority-owned business”.

SBA has requested emergency approval from OMB for the revised information collection to implement the Economic Aid Act as expeditiously as possible.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires administrative agencies to consider the effect of their actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of these small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As discussed above, SBA is publishing this rule as an interim final rule without advance notice and public comment because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the amendments in the Act without

regard to notice requirements. This rule is, therefore, exempt from the RFA requirements.

List of Subjects in 13 CFR Part 120

Loan programs-business, Small businesses, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

PART 120--BUSINESS LOANS

1. The authority citation for 13 CFR part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h), and (m), 636m, 650, 687(f), 696(3), 697, 697a, and 697e; Public Law 111-5, 123 Stat. 115; Public Law 111-240, 124 Stat. 2504; Public Law 116-260, 134 Stat. 1182.

2. Amend § 120.882 as follows:

a. Remove the number “50” in paragraph (e) introductory text and add the number “100” in its place.

b. Revise paragraphs (g)(3) and (11);

c. Redesignate paragraph (g)(15) as paragraph (g)(16);

d. Add a new paragraph (g)(15);

e. In the newly redesignated paragraph (g)(16):

i. Remove the paragraph heading;

ii. In the definition for the term *Qualified debt*:

A. Redesignate paragraphs (i) through (vii) as paragraphs (A) through (G);

B. Revise newly redesignated paragraph (A);

C. Remove newly redesignated paragraphs (B) and (G) and further redesignate paragraphs (C) through (F) as paragraphs (B) through (E);

D. In newly redesignated paragraph (B), remove “(iii)”, “13 CFR 120.131 and 13 CFR 120.870(b)”, and “13 CFR 120.131(b)” and add in

their places “(B)”, “§§ 120.131 and 120.870(b)”, and “§ 120.131(b)”, respectively;

E. Add the word “and” at the end of newly redesignated paragraph (D); and

F. Revise newly redesignated paragraph (E); and

iii. Revise the definition for the term *Same institution debt*.

The revisions and addition read as follows:

§ 120.882 Eligible Project costs for 504 loans.

* * * * *

(g) * * *

(3) A loan that is subject to a guarantee by a Federal agency or department may be refinanced under the following conditions and requirements:

(i) An existing 504 loan may be refinanced if both the Third Party Loan and the 504 Loan are being refinanced or the Third Party Loan has been paid in full.

(ii) An existing 7(a) loan may be refinanced if the CDC verifies in writing that the present lender is either unwilling or unable to modify the current payment schedule. In the case of same institution debt, if the Third Party Lender or the CDC affiliate as authorized under § 120.820 is the 7(a) lender, the loan will be eligible for 504 refinancing only if the lender is unable to modify the terms of the existing loan because a secondary market investor will not agree to modified terms.

(iii) The refinancing will provide a substantial benefit to the borrower. For purposes of this paragraph (g)(3)(iii), “substantial benefit” means that the portion of the new installment amount attributable to the debt being refinanced must be at least 10 percent less than the existing installment amount(s). Prepayment penalties, financing fees, and other financing costs must be added to the amount being refinanced in calculating the percentage reduction in the new installment payment, but the portion of

the new installment amount attributable to Eligible Business Expenses (as described in paragraph (g)(6)(ii) of this section) is not included in this calculation. Exceptions to the 10 percent reduction requirement may be approved by the Director, Office of Financial Assistance (D/FA) or designee for good cause. PCLP CDCs may not use their delegated authority to approve a loan requiring the exception in this paragraph (g)(3)(iii).

* * * * *

(11) PCLP CDCs may not approve the refinancing of same institution debt under their delegated authority and must submit the application to SBA for approval.

* * * * *

(15) Notwithstanding § 120.860, a debt may be refinanced under this paragraph (g) if it does not meet the job creation or other economic development objectives set forth in § 120.861 or § 120.862. In such case, the 504 loan may not exceed the product obtained by multiplying the number of employees of the Borrower by \$75,000. The number of employees of the Borrower is equal to the sum of:

(i) The number of full-time employees of the Borrower on the date of the application; and

(ii) The product obtained by multiplying:

(A) The number of part-time employees of the Borrower on the date of the application; by

(B) The quotient obtained by dividing the average number of hours each part-time employee of the Borrower works each week by 40.

Example to paragraph (g)(15): 30 full-time employees and 35 part-time employees working 20 hours per week is calculated as follows: $30 + (35 \times (20/40)) = 47.5$. The maximum amount of the 504 loan would be 47.5 multiplied by \$75,000, or \$3,562,500.

(16) * * *

Qualified debt * * *

(A) That was incurred not less than 6 months before the date of the application for refinancing available under this paragraph (g).

* * * * *

(E) That is not a Third Party Loan that is part of an existing 504 Project, except as allowed under paragraph (g)(3) of this section.

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Same institution debt means any debt of the CDC or the Third Party Lender, or an affiliate of either, that is providing funds for the refinancing.

Isabella Casillas Guzman,
Administrator.

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